

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

NEAL SALES,

Plaintiff,

vs.

SUSAN BAROS,

Defendant.

Case No. 3:17-CV-00186-RCJ-WGC

**ORDER**

In two motions, Plaintiff moves for sanctions against Defendant, claiming Defendant failed to submit a proposed pretrial order in accordance with this Court's Order. However, the Order mandated the parties together submit a *joint* proposal, and the Local Rules place the burden on Plaintiff to initiate this process—not Defendant. Thus, Defendant has not violated the Order, so the Court denies the motions.

**FACTUAL BACKGROUND**

This Court denied summary judgment, (ECF No. 131), and then, on January 24, ordered the parties to “lodge their proposed joint pretrial order within thirty (30) days from entry of this order,” (ECF No. 133). Plaintiff did not engage in any discussions with Defendant, (ECF No. 138 Ex. 2 at ¶ 6), and, instead, filed an individualized proposed pretrial order, (ECF No. 134).

1 Incorporating aspects of Plaintiff’s proposal, Defendant prepared a draft proposal, which she sent  
2 to Plaintiff seeking his input. (ECF No. 138 Ex. 1.) Plaintiff did not respond to Defendant regarding  
3 her draft. (ECF No. 138 Ex. 2 at ¶¶ 8–9.) Defendant has not filed anything in response to this  
4 Court’s Order, (ECF No. 133), and there is still no proposed joint pretrial order on the Docket.

5 Despite not responding to Defendant’s communication, Plaintiff moves for sanctions under  
6 Fed. R. Civ. P. 16(f) and an entry of default judgment under Fed. R. Civ. P. 55, claiming that  
7 Defendant’s failure to file an individualized proposed pretrial order constitutes noncompliance  
8 with the Order. (ECF Nos. 136–37.)

### 9 ANALYSIS

10 Initially, the Court notes that Rule 55 is not applicable to this motion. This Rule places a  
11 defendant in default for failing to “plead or otherwise defend” in the action—not for failing to  
12 comply with a court order. Fed. R. Civ. P. 55(a). However, if Defendant did violate the Court’s  
13 Order, Plaintiff is correct that Rule 16(f) grants the Court the ability to issue appropriate sanctions.

14 Nonetheless, Defendant did not violate the Court’s Order—Plaintiff did. First, the Local  
15 Rules and the Order mandated the parties to file a proposed *joint* pretrial order. Instead of  
16 complying with that Rule and this Court’s Order, Plaintiff filed his own individualized proposal.  
17 Second, LR 16-3(b) places “the initiative on the pro se plaintiff” to begin the process of conferring  
18 with the other parties in regard to “prepar[ing] and fil[ing] [the] proposed joint pretrial order.”  
19 Thus, the Court cannot sanction Defendant for failing to satisfy Plaintiff’s burden. Further,  
20 Defendant did more than the Rules require by taking the initiative in preparing a draft order,  
21 sending the draft to Plaintiff, and inviting his input, which Plaintiff then ignored and filed these  
22 motions instead.

23 Accordingly, the Court denies Plaintiff’s motions, strikes his proposal, and orders the  
24 parties to prepare and file a *joint* proposed pretrial order no later than thirty days from the entry of

1 this Order. The Court takes this opportunity to remind the parties that failure to comply with the  
2 Court's Orders and the Local Rules may result in sanctions.

3 **CONCLUSION**

4 IT IS HEREBY ORDERED that Plaintiff's Proposed Pretrial Order (ECF No. 134) is  
5 STRICKEN.

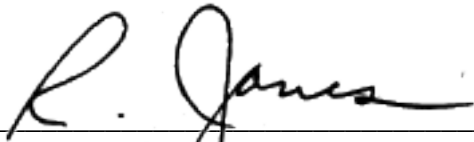
6 IT IS FURTHER ORDERED that Plaintiff's Motion: 55(a) Default; Default Judgment  
7 (ECF No. 137) is DENIED.

8 IT IS FURTHER ORDERED that Plaintiff's Motion: Enact Rule 16(f)(1)(A)(B)(C) (ECF  
9 No. 136) is DENIED.

10 IT IS FURTHER ORDERED that the parties shall file a Joint Proposed Pretrial Order no  
11 later than sixty days from the entry of this Order.

12 IT IS SO ORDERED.

13 Dated July 8, 2020.

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17 ROBERT C. JONES  
18 United States District Judge  
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